

STATEMENT OF MITCH DEMIENTIEFF, CHAIR  
FEDERAL SUBSISTENCE BOARD  
BEFORE THE  
SENATE COMMITTEE ON INDIAN AFFAIRS  
OVERSIGHT HEARING ON SUBSISTENCE HUNTING AND FISHING  
IN THE STATE OF ALASKA

Mr. Chairman and Members of the Committee, I am Mitch Demientieff. I am the Chairman of the Federal Subsistence Board. I appreciate the opportunity to testify before you today. I have had the pleasure of chairing the Board for the last seven of the twelve years since the Board's institution in 1990. The Board was established to administer the priority for subsistence uses of fish and wildlife by rural residents on federal lands, as this priority is set out in Title VIII of the Alaska National Interest Lands Conservation Act, or ANILCA. My comments will focus on the Board's implementation of Title VIII and the relationship of this law to Alaska Natives. There is no more important issue to Alaska Natives than subsistence and sustaining this lifestyle for future generations. When Alaskans speak of subsistence, the importance of protecting those who depend on subsistence, as well as the conflict between the federal law and the state constitution, are the defining issues. In 1980, Congress passed ANILCA which established a priority for subsistence uses of fish and wildlife by rural Alaska residents on federal lands in Alaska over other purposes. By its terms, Title VIII of ANILCA declared, in section 801(1) that:

the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands and by Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence.

The statute allows the State of Alaska to implement this priority if state laws exist that are generally applicable to this federal requirement. The State enacted such laws and implemented the rural subsistence priority from the late 1970's until 1989, when the Alaska Supreme Court determined that

the rural resident subsistence priority in state law violated the Alaska Constitution's guarantee of equal access to the state's resources. Since 1990, federal agencies in both the Departments of the Interior and Agriculture have implemented this priority on the federal lands in Alaska, primarily for subsistence hunting. Since October 1999, as a result of the Ninth Circuit Court's ruling in the Katie John case, federal agencies have also been managing subsistence fisheries that occur in those rivers and other inland waters appurtenant to the federal land units in Alaska.

There have been numerous attempts over the years to resolve this conflict between federal and state laws, primarily through efforts to create a state constitutional amendment that would allow a subsistence priority for rural residents in compliance with federal law. Such an amendment requires approval by two thirds of the Alaska Legislature, and then approval by a majority of the voters in a statewide general election. However, passage of a state constitutional amendment has not occurred.

From the beginning of federal management, the federal government has been reluctant but committed managers. The federal agencies, and the Federal Subsistence Board, which has been delegated regulatory responsibilities by the Secretaries, have been serious about implementing the subsistence priority mandated by Title VIII. Even so, it has always been a primary federal goal to return unified management of fish and wildlife to the State when compliance with ANILCA is achieved. To that end, the federal agencies have been walking a fine line between performing due diligence regarding Title VIII responsibilities and minimizing duplication with state management of fish and wildlife.

It is especially challenging to manage a program that is temporary by design, but is without resolution. In view of this, the execution of the Federal Subsistence Program has been focused in three areas: 1) maximizing involvement in the federal program by Alaskans, 2) upholding the purposes of Title VIII to conserve the fish and wildlife resources and protect the subsistence priority; and 3) maximizing cooperation with the State of Alaska in the management of fish and wildlife.

### **Involvement by Alaskans in the Federal Subsistence Program:**

I will now address how federal management has involved Alaskans in the program. The primary goal of Title VIII is to protect subsistence uses by rural residents of Alaska, including both Natives and non-Natives, who depend on fish and wildlife. To that end, the federal program has taken steps to insure that those directly affected by federal management are afforded the opportunity to play an active and meaningful role in the program. Title VIII requires a system of Regional Advisory Councils to review, evaluate, and make recommendations concerning proposals for regulations, policies, management plans and other matters relating to subsistence uses of fish and wildlife within their regions. The ten Federal Subsistence Regional Advisory Councils are made up of 98 citizen volunteers appointed by the Secretary of the Interior. The members are respected community and regional leaders who have demonstrated knowledge and experience in the use and management of fish and wildlife. These councils meet at least twice each year to develop recommendations regarding subsistence hunting and fishing regulations for their respective regions. Individual members of these councils also serve on various committees and task groups appointed for specific purposes, and to resolve issues of statewide importance. These councils help achieve the Congressional finding in ANILCA that “an administrative structure be established for the purpose of enabling rural residents who have a personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.”

The federal program also cooperates with a variety of organizations in the collection of information about subsistence harvests and the status and trends of the various wildlife and fish populations. These organizations include the Alaska Department of Fish and Game, Alaska Native tribes, statewide and regional Native organizations, and academia. With the advent of federal fisheries management in 1999, a monitoring program specific to addressing fisheries information needs was established to augment similar efforts by the State of Alaska. The program provides critical information to support federal

subsistence fisheries management decisions, as well as assisting state management, while directly engaging the State, and Alaska Native, local involvement in subsistence fisheries monitoring projects and local hires. In the last two years, \$14 million has been expended to fund 119 fisheries monitoring studies. To date, the State of Alaska has received \$5.9 million, and Alaska Native and local rural organizations have received \$5.3 million to perform this work.

Recently, the Federal Subsistence Program announced the first installment of funds to support the “Partners in Fisheries Monitoring” program. This year, approximately \$900,000 will be provided to six Native and tribal organizations to hire and support seven fisheries and social science professionals. These new hires are intended to add capability to these organizations so that they become effective partners with the federal agencies, as well as the Alaska Department of Fish and Game. These new positions will enable these organizations to develop, coordinate, and execute fisheries monitoring studies within their respective regions, identify management issues, and conduct community and regional outreach and education. These positions will work alongside their federal and state counterparts as a means of building trust and cooperation with these Native organizations who have long felt removed from the management of the resources important to their subsistence way of life.

In addition, during the past year we have added a tribal liaison specialist to our staff. This person is actively engaging with state-wide and regional level Native and tribal organizations, as well as individual tribes at the community level. This staff member helps to lead and implement the Department’s tribal consultation responsibility.

#### **Federal State Coordination:**

Since the outset of the federal program in 1990, we have recognized the need to work closely with Alaska’s Department of Fish and Game. Due to the conflicting state and federal laws about allocation of subsistence resources in Alaska, coordinated management by state and federal agencies has become

a requisite for responsible stewardship of these resources. This has been accomplished so far by dual management, which consists of coordination between the two managers to schedule harvest opportunities on their respective lands and meet their individually mandated objectives while ensuring the continued health of the wildlife populations.

Dual management occurs under a variety of scenarios. Healthy fish populations, for example, support a commercial fishing industry, sport/recreational fishery, state subsistence harvest opportunities (which are open to both urban and rural residents), and federally qualified rural subsistence users. Therefore, federal managers have established harvest regulations for the federally qualified rural residents, while state regulations are applied on both federal and non-federal lands to provide opportunities for commercial fishing, sport fishing and other subsistence fishing. This system of dual regulations for the same resource requires careful coordination. When applied to migratory fish stocks such as Pacific Salmon, which pass through a checkerboard land ownership pattern, dual management requires precise choreography with cooperative and skilled field managers. Over-harvest by commercial fishing on state waters at the mouths of rivers can significantly affect subsistence opportunities of rural residents on federal lands as the salmon migration moves upstream.

Even in situations where non-federally qualified rural residents are restricted from harvest activities on federal lands because of low or recovering wildlife populations, dual management continues.

Populations such as migratory caribou herds move between federal and non-federal lands where the herd is exposed to either state or federal regulations over the course of their movements. Dual management consists of coordination between the two managers to schedule harvest opportunities on their respective lands, to meet their individually mandated objectives, while ensuring the continued health of the wildlife population.

Dual management between the Alaska Department of Fish and Game and the Federal Subsistence Program is currently being guided through an Interim Memorandum of Agreement (MOA). This

document provides a foundation and direction for coordinated interagency subsistence fisheries and wildlife management consistent with state and federal statutes. More specifically, it is intended to protect and promote the sustained health of fish and wildlife populations, to ensure conservation and stability in fisheries and wildlife management, and to include meaningful public involvement.

Through the implementation of the MOA, the federal agencies have worked with the State of Alaska to develop specific protocols that provide detailed guidance to the field managers for various aspects of dual management. Development of protocols is a continuing effort. These protocols address information sharing between the agencies, coordinated research projects and monitoring activities, and coordinated in-season management decision making.

Full time federal and state liaison positions have also been established to facilitate this cooperative effort. Federal funding to support the State's liaison and coordination efforts is provided through cooperative agreements on an annual basis. This year's agreement provides \$470,000 to the Alaska Department of Fish and Game for this purpose.

On the topic of fisheries, when the Federal Subsistence Board undertook subsistence fisheries management in 1999, the salmon crisis in western Alaska was already underway. In particular, the salmon stocks from the Yukon and Kuskokwim Rivers were in a downward trend. In our first two years of management, both state and federal fisheries managers were faced with developing a management strategy requiring some restrictions to all uses including commercial, recreational, and subsistence. This significantly impacted the 3,500 households along these two rivers. In these regions, both commercial and subsistence fisheries are intertwined with small commercial harvests, providing cash supplements to support the purchase of boats, fuel, nets, ammunition and other items critical to their subsistence lifestyle. The management strategy was unfolded through closures of non-subsistence uses, and a schedule of openings and closures of subsistence uses. The ultimate goal of this approach was to deliver fish to support subsistence uses to all the communities spread throughout these two

rivers.

In conclusion, although the State of Alaska is not presently implementing the subsistence priority mandated by Title VIII of ANILCA, Alaskans are very much involved and participating in the federal program. As stated previously, it has always been the goal to return subsistence management to the State of Alaska as soon as the State returns to compliance with the provisions of ANILCA. It has been our hope, as we have designed and implemented our management systems, that we fulfill the purposes and intent of Title VIII, maximize cooperation with state management, and maximize the involvement in the program by Alaskans, particularly those who are directly affected by management decisions. As the program has evolved, we have created innovations in the way the users are involved in providing input to the important decisions that affect their lives. We are committed to this course of action. I would be happy to respond to any questions you and the committee may have. Mr. Chairman, thank you again for the opportunity to testify before you today.